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10/616,460

07/08/2003

Jeff Abel

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22147

7590

06/22/2006

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/616,460

Applicant(s)

ABEL, JEFF

Examiner

David J. Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-14,16-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-14,16-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 4-20-06 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 11, 18 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent No. 2582190.

Referring to claims 1 and 18, the French patent discloses a fish net and method comprising, a frame (not shown), a net – at G, of a flexible material attached to the frame, the frame holding the net in a position to land a fish – see the drawing figure, and a flexible length measuring scale – at A-D,H, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure.

Referring to claim 2, the French patent discloses the length measuring scale further includes length markings – at C-D, representing standard units of length, and numeral designations associated with the length markings – see for example the drawing figure.

Referring to claim 4, the French patent discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure.

Referring to claim 11, the French patent discloses the net material is a mesh and net material – see for example the drawing figure.

Referring to claim 22, the French patent discloses the length measuring scale is visible on opposing sides of the net – see the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, such that the net may be used in an inverted configuration with respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

Referring to claim 23, the French patent discloses the length measuring scale and the numeral designations are visible on opposing sides of the net – see for example the drawing figure where the length measuring scale – at- A-J, extends from one side to an opposing side of the net – at G, and are properly readable when the net is used in an inverted configuration with respect to the frame – see for example the drawing figure where the net – at G is in a vertical orientation and therefore must be attached to an object/frame for support.

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Referring to claim 24, the French patent discloses the standard units of length are selected from the group consisting of English units and metric units – see for example the drawing figure and the English abstract.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of U.S. Patent No. 5,501,026 to Bryant et al.

Referring to claim 5, the French patent does not disclose the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale. Bryant et al. does disclose the net forms a pocket – at 28-30, in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – at 22 – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the length measuring scale of Bryant et al., so as to allow for the animal to be quickly and accurately measured while in the net.

Referring to claim 6, The French patent further discloses the length measuring scale extends from one side of the net to the other – see the drawing figure. The French patent does not

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disclose the frame is a substantially closed loop portion having opposing sides. Bryant et al. does disclose the frame further comprises a substantially closed loop portion – at 24, having opposing sides – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the frame being a closed loop of Bryant et al., so as to allow for the net to totally enclose any objects located inside.

Referring to claim 7, the French patent as modified by Bryant et al. further discloses the net further comprising, first and second side pieces with curved edges – see at the sides of item 24 in figure 1 of Bryant et al., a substantially linear center piece – at the upper portions of the net and the net portion – proximate 34 in figure 2 of Bryant et al., having side edges – see figure 1, the length measuring scale – at 100, being disposed on the center piece – see figures 1-3, and the side edges of the center piece being connected to the curved edges of the first and second side pieces, forming a pocket in which the animal naturally tends to rest in substantial linear alignment with the length measuring scale – see for example figures 1-3 of Bryant et al.

Referring to claim 8, the French patent as modified by Bryant et al. further discloses the first and second side pieces and the center piece are made of the same materials – see figures 1-3 of Bryant et al.

Referring to claim 9, the French patent as modified by Bryant et al. further discloses the first and second side pieces and the center piece are made of different materials – see the different materials of the net – at 28 and 40 in figures 1-3 of Bryant et al.

Referring to claim 10, the French patent as modified by Bryant et al. further disclose the center piece is of a material selected from the group consisting of mesh and net materials – see for example proximate 34 in figure 2 of Bryant et al.

Referring to claim 13, the French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28, being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 1 above, and further in view of Caddis Manufacturing, Inc. online catalog (from now on referred to as Caddis). The French patent does not disclose the length measuring scale is disposed directly on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk screening onto the material of the net. Caddis does disclose the length measuring scale is disposed directly on the net by a process selected from the group consisting of weaving into the material of the net, embroidering onto the material of the net, printing on the material of the net, and silk-screening on the material of the net – see for example the pictures of Caddis. Therefore it would have been obvious to one of ordinary skill in the art to take the fish net of the French patent and add the measuring scale disposed on the net from one of the methods described above of Caddis, so as to make the device more durable in that the length scale is permanently attached to the net.

Claims 14, 16-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent in view of Bryant et al.

Referring to claims 14 and 16, the French patent discloses a fish net comprising, a frame (not shown), a net of flexible material – at G, attached to the frame, the frame holding the net in a position to land a fish – see for example the drawing figure, and a flexible length measuring scale – at A-D,H, permanently disposed generally linearly on a surface of the net – see the drawing figure, such that a user may determine a size of a fish held in the net by visually comparing the fish with the length measuring scale – see the drawing figure. The French patent discloses the length measuring scale further includes length markings – at C-D, representing standard units of length, and numeral designations associated with the length markings – see for example the drawing figure. The French patent further discloses the net includes a bottom and the length markings include a zero point – see between items C and D in the drawing figure, near the bottom, with two coordinated scales sharing the zero point – see the drawing figure, and extending in opposing directions therefrom – see for example the drawing figure, whereby a user may visually determine the length of the fish by substantially aligning the fish with the length scale – see for example the drawing figure, and adding the numeral designations which are approximately aligned with opposing ends of the fish – see for example the drawing figure. The French patent further discloses the length measuring scale includes length markings representing modified units of length to compensate for curvature of the fish and the length measuring scale – see for example at C and D in the drawing figure. The French patent further discloses the net forms a pocket in which the fish naturally tends to rest in substantial linear alignment with the length measuring scale – see for example – at G in the drawing figure. The French patent does not disclose a handle and a substantially closed loop portion attached to the handle, the net being attached to the loop portion. Bryant et al. does disclose a handle – at 22, and a substantially



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closed loop portion – at 24, attached to the handle – see for example figures 1-3, the net – at 28, being attached to the loop portion – see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the handle and loop portion of Bryant et al., so as to allow for the net to be easily handled by the user.

Referring to claim 17, the French patent as modified by Bryant et al. discloses the net material is a mesh and net material – see for example the drawing figure of the French patent and figure 1 of Bryant et al.

Referring to claim 21, the French patent as modified by Bryant et al. further discloses the length markings represent standard units of length – see for example the drawing figure and the English abstract of the French patent and – at 100 in figure 1 of Bryant et al.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over the French patent as applied to claim 18 above, and further in view of Bryant et al. The French patent does not disclose the step of placing the fish within the fish net further comprises causing the fish to rest in a bottom of the net in substantial linear alignment with the length scale. Bryant et al. does disclose the step of placing the fish within the fish net further comprises causing the fish to rest in a bottom of the net in substantial linear alignment with the length scale – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of the French patent and add the length measuring scale and net of Bryant et al., so as to allow for the animal to be quickly and accurately measured while in the net.

***Response to Amendment***

4. The affidavit under 37 CFR 1.132 filed 4-20-06 is insufficient to overcome the rejection of claims 1-2, 4-14, 16-18 and 20-24 based upon the French patent in view of the Bryant et al. and “Caddis” references as set forth in the last Office action because: applicant’s commercial success as documented in the affidavit provides no information on the market share of the product compared with any possible competitors and therefore it is unclear to whether the number of devices sold is significant.

***Response to Arguments***

5. Regarding claim 1, the French patent FR 2582190 does disclose a length measuring scale – at A-D,H, with flexible portions – at H, being strings/cords that hold the length measuring scale to the net. The length measuring scales – at C,D, are disposed on the gutter frame as seen in the drawing figure and the gutter frame is disposed on the net – at G as seen in the drawing figure. Therefore, since the gutter frame is disposed on the net the length measuring scale is disposed on the net. The French patent does not specifically disclose a frame, however this feature is inherent to one of ordinary skill in the art in that the net must be supported by a frame to be operable in landing fish.

Regarding claim 4, the French patent discloses the length measuring scales – at C,D, are modified in that the measuring scales are modified to extend in different directions on the gutter frame as seen in the drawing figure.

Applicant's arguments with respect to claims 5 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 22-23, the French patent discloses the length measuring scales – at C,D, are visible from opposing sides of the net being the sides of the net – at G, proximate the front and rear of the net as seen in the drawing figure.

Regarding claim 24, it is inherent that the units of measure of the length measuring scales of the French patent are in either English or metric units in that these are the only units of measure known to those of ordinary skill in the art to measure fish.

Regarding claims 6-7, 10 and 13, the combination of the French patent and the Bryant et al. reference US 5501026 is deemed proper given the motivation to combine the references given above in paragraph 3 above.

Regarding claim 6, the French patent does disclose the length measuring scale – at C,D, is on the net – at G as seen in the drawing figure.

Regarding claim 7, the Bryant et al. reference discloses linear center portions of the net in that the net of Bryant et al. is made of linear pieces of material made to form a mesh.

Regarding claims 14, 16-17 and 21 applicant relies upon the same arguments as to claim 1, therefore see the response to these arguments above.

Further, regarding claim 16, the length measuring scale – at C,D of the French patent is disposed on a curved portion of the gutter frame as seen in the drawing figure. Therefore, the curves of the fish's body can more evenly match up with the measuring scale when placed into the gutter frame.

Applicant's arguments with respect to claims 8-9 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claim 12, the combination of the French patent with the non patent literature reference to "Caddis" is deemed proper given the motivation to combine these references found above in paragraph 3 of this office action. Further, the combination of the French patent and the "Caddis" reference is deemed to be functional in that the gutter frame of the French can be made of a mesh material with length measuring scale of "Caddis" in that both the gutter of the French reference and the mesh measuring scale of the "Caddis" reference both operate to hold fish.

### *Conclusion*


6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David Parsley  
Patent Examiner  
Art Unit 3643

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**  
6/19/06